

ORAL ARGUMENT SCHEDULED FOR OCTOBER 4, 2024

No. 23-5083

**IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

State of Georgia, *et al.*,

Plaintiffs-Appellees,

v.

United States Department of Justice,

Defendant-Appellant.

On Appeal from a Final Judgment of the
United States District Court for the District of Columbia
Case No. 21 Civ. 3138, Judge Trevor N. McFadden

MOTION OF NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.;
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW;
ADVANCEMENT PROJECT EDUCATION FUND; ASIAN AMERICANS
ADVANCING JUSTICE | AAJC; AND SOUTHERN POVERTY LAW CENTER
TO PARTICIPATE IN ORAL ARGUMENT AS AMICI CURIAE

Pursuant to D.C. Circuit Rules 27 and 34(e), undersigned Amici Curiae respectfully request permission to participate in oral argument in support of Defendant-Appellant United States Department of Justice ("DOJ"). Amici request five minutes of oral argument time, and any corresponding enlargement of the oral argument time for the parties that the Court deems appropriate. The parties have advised Amici that they take no position on this motion.

Amici's reasons in support of this motion are set forth below.

1. On September 15, 2023, Amici filed an amicus brief in support of Defendant-Appellant DOJ. (Doc. No. 2017028.)

2. Oral argument is scheduled for October 4, 2024. (Doc. No. 2068185.)

3. This appeal presents an important question regarding the application of FOIA Exemption 5, 5 U.S.C. § 552(b)(5), to common-interest litigation strategy.

4. Amici are civil rights and racial justice organizations whose own common-interest, attorney-work product communications with DOJ are at issue on this appeal.¹ Specifically, Amici are counsel for certain private plaintiffs in the previously consolidated, ongoing litigation captioned *In re Georgia Senate Bill 202*, No. 21-mi-55555 (N.D. Ga.), and whose privileged communications with DOJ in that litigation are the subject of the at-issue FOIA request.

5. In addition to *In re Georgia Senate Bill 202*, Amici regularly litigate other cases in pursuit of the same litigation objectives as DOJ and where it is critical that they can confer freely with DOJ regarding joint litigation strategy.

6. In their amicus brief, Amici note that they regularly serve FOIA requests of their own on government agencies and have a strong interest in ensuring appropriate transparency in government decision-making. Nonetheless, Amici further explain that the DOJ properly resisted disclosure of the documents at issue

¹ A complete description of Amici, the Certificate of Parties and Amici Curiae, and Amici's Corporate Disclosure Statement are provided in Amici's September 15, 2023 amicus brief (Doc No. 2017028).

here because: (i) the at-issue communications reflect their privileged attorney work product shared pursuant to a common interest with DOJ; (ii) these communications fall squarely within FOIA Exemption 5, which protects the ability of DOJ and private parties to communicate freely when they actively pursue convergent litigation goals such as vindicating the fundamental right to vote; and (iii) compelled disclosure would have significant adverse implications—for the ongoing litigation and more generally, for civil rights organizations that need to communicate freely with DOJ when they use litigation to vindicate important federal rights.

7. Amici have a strong interest in the proper interpretation and application of Exemption 5 and believe that their participation in oral argument will provide a unique perspective regarding the issues presented.

For the reasons stated above, Amici respectfully request that this Court grant their motion to participate in oral argument, grant Amici five minutes of oral argument time, and issue any corresponding enlargement of the oral argument time for the parties that the Court deems appropriate.

August 23, 2024

Respectfully submitted,

/s/ Anuja D. Thatte

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 479 words, exclusive of the components specified by Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1). This certification is made in reliance upon the word count function of Microsoft Word. The undersigned further certifies that this brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it has been prepared in a proportionally spaced typeface using Times New Roman size 14 font.

/s/ Anuja D. Thatte
Anuja D. Thatte

Date: August 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2024, I electronically filed the foregoing Motion with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Anuja D. Thatte
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